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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(24)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.69/2002

APPELLANT Chamaru son of Guruwaru, Occupation Agriculture, resident of Village Karmari, Police Chowki- Bastar, P.S.- Jagdalpur, Distt.-Bastar (C.G.)
Accused
(In Jail)

Vs

RESPONDENT State of Chhattisgarh Through the P.S. City Kotwali, Jagdalpur, Distt.-Bastar Jagdalpur (C.G.)

Present:

Mr. Manoj Mishra, Advocate for the appellant.

Mr. Sushil Dubey, Govt. Advocate for the respondent-State.

ORAL JUDGMENT

(31st August, 2007)

Per Dhirendra Mishra, J:

This appeal is directed against the judgment of conviction and order of sentence dated 26th December, 2001 passed in Sessions Trial No.82/01 whereby learned Special Judge (SC ST Act) Bastar at Jagdalpur has convicted the appellant under Section 376 (1) of the IPC & Section 3 (1) (XII) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities), Act 1989 and sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.2,000/-, in default of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

payment of fine additional R.I. for 1 year & R.I. for 2 years and to pay a fine of Rs.1,000/-, in default of payment of fine additional R.I. for 4 months respectively.

Case of the prosecution, in brief, is that on 23.7.1999 the prosecutrix, who is a lady aged 27 years and belongs to Scheduled Tribe, lodged FIR of Ex.P-1 in the Police Station Bastar mentioning therein that her family members were sleeping in the house, however she was awake, the appellant came to her house at about 10 p.m. and called her husband, whereupon she came out of the house and on being demanded by the accused she gave tobacco to him, thereafter she closed the door and slept. The appellant again came at about 11 pm, entered in her room by removing the door and committed sexual intercourse with her as a result of which she woke up and saw the appellant. She called her husband, however, by that time the appellant fled from there. On the following day the panchayat was convened in the village and thereafter the report was lodged in the police station. The prosecutrix was sent for medical examination to Maharani Hospital, Jagdalpur where she was examined and her MLC report is Ex.P-2.

After completing investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur and the same was

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

received on transfer for trial by learned Special Judge. The prosecution examined 5 witnesses during trial and thereafter the statement of accused was recorded under Section 313 of Cr.P.C. After hearing learned counsel for the respective parties, learned Special Judge convicted and sentenced the appellant as mentioned herein above.

I have heard learned counsel for the parties and perused the record.

Conviction of the appellant is based on the statement of prosecutrix (PW- 1), Budhru (PW-2), husband of prosecutrix & Budhri Bai (PW-3), mother of prosecutrix.

The prosecutrix (PW-1) has stated that on the date of incident she was sleeping in her home. Chamru came once and returned. Thereafter, on the same night he again came to her house, at hat time she was cooking, he caught hold of her hand. We had consumed liquor. Accused committed rape with her. Her husband was sleeping beside her, therefore, she thought that when her husband is sleeping beside her, then who is this person and therefore, she woke and saw the appellant. She chased the appellant for a distance. Thereafter, she narrated the incident to her mother. A panchayat was convened in the village and thereafter she lodged the report in the police station.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Budhri Bai (PW-3) has stated that the prosecutrix is her daughter, the prosecutrix at about 12.00 came to her house, at that time she was suffering from fever, and told her that Chamru had raped her. Thereafter, she had accompanied the prosecutrix upto the house of Chamru, however, he was not there.

Budhru (PW-2), husband of prosecutrix, has stated that he was sleeping in his house, his wife was also sleeping. Chamru came to his house and raped his wife. His wife wake-up him. Since he was in deep sleep, therefore, he could not get up promptly. His wife had chased Chamru for a distance and in the morning his wife narrated him the incident.

The court below relying upon the statement of prosecutrix and further considering that the prosecutrix had chased the appellant for a distance has held that statement of the prosecutrix and her conduct is reliable.

From perusal of the FIR, it is observed that the prosecutrix has not stated in the said report that after the incident she chased the accused for a distance. Even otherwise, from perusal of the statement of prosecutrix it is evident that at one breath she claims that when accused entered her house she was cooking and at the same breath she claims that she was asleep. The overall conduct of the

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आदेश पत्रक (पूर्वानुबद्ध)

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prosecutrix and the manner in which the incident alleged to have occurred appears to be highly improbable and does not inspire confidence. It is highly improbable that a lady, who is sleeping between two children and her husband is also sleeping nearby, could be raped by any other person and her husband would come to know about the incident only in the next morning. The trial court has committed illegality in placing explicit reliance upon the statement of the prosecutrix as also on the statement of her mother & husband, therefore, the impugned judgment of conviction cannot be sustained.

In the result, the appeal of the appellant succeeds. Conviction of the appellant under Section 376 (1) of the IPC & Section 3 (1) (XII) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities), Act and sentences imposed under those sections are hereby set aside. The appellant be set at liberty forthwith, if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge